



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,641	01/06/2004	Gary Wayne Bagnall	37370-33	4110

7590 09/13/2004

Joseph G. Swan, Esq.  
Mitchell, Silberberg & Knupp LLP  
11377 West Olympic Boulevard  
Los Angeles, CA 90064

EXAMINER
----------

SHAW, ELIZABETH ANNE

ART UNIT	PAPER NUMBER
----------	--------------

3644

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/752,641	<b>Applicant(s)</b> BAGNALL, GARY WAYNE	
	<b>Examiner</b> Elizabeth A. Shaw	<b>Art Unit</b> 3644	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-14 and 16-20 is/are rejected.
- 7) ☒ Claim(s) 8 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/6/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 7, 9, 11, 14, 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Tominaga et al (5,722,347). Tominaga et al show an apparatus for an aquarium comprising a rail 2, an attachment means 15 comprising a suction cup 3 for attaching the rail 2 to the inside surface of an aquarium at an underwater point, see fig. 4, and a contoured dock element A which is buoyant and having a sliding means/hole 4 for attaching to the rail 2 for allowing the dock element A to freely slide along the rail. The docking element A being planar and having a ramp 6 oriented at a downward angle from the platform A.

Claims 1, 6, 10, 11, 16, 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Parr (5,377,623). Parr shows an apparatus capable of being used in an aquarium comprising a rail 13, an attachment means (unnumbered) for attaching the rail 13 to the aquarium such that the rail 13 runs along the inside wall of the aquarium, see figs. 6, 7, and a dock element 11 having a sliding means 15 for allowing the dock element to freely slide along the rail 13. The attachment means is also considered to be able to hook over the edge of an aquarium wall by virtue of its inverted U-shape.

Art Unit: 3644

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tominaga et al. Tominaga et al show in another embodiment the use of a second rail 2 running along the inside surface of the aquarium wall and the docking means 1 having sliding means 4 for permitting the docking element 1 to slide along the second rail 2, see fig. 2. With respect to claim 4, to use a second docking rail and attachment means as shown by the embodiment of Tominaga et al Fig. 2 with the embodiment of Tominaga et al Fig. 4 would have been obvious to one skilled in the art in order to more securely anchor the rails and the docking element to the aquarium wall and to prevent twisting of the docking element as the animals use the device.

Claims 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tominaga et al in view of Parr. Tominaga et al do not show the use of a hook. Parr shows the use of a hook capable of hooking the top edge of an aquarium. To use the hook of Parr with the device of Tominaga et al would have been obvious to one skilled in the art as a replacement of functional equivalents.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "the second rail is attached to the rail" is unclear. Appropriate correction is required.

***Allowable Subject Matter***

Claims 8 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

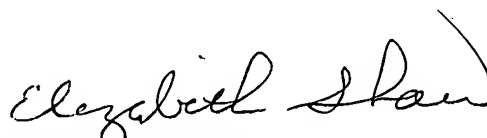
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Included for further reference on docking elements are: Holden (3,517,649), Goldman et al (4,820,556), Tominaga et al (5,722,347), Licata (6,029,605), Kowalski (6,170,093), Stalfire (6,237,166), Hootman (6,532,899) and Miller (D 104,077).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 703-308-1853. The examiner can normally be reached on M-Th 9:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

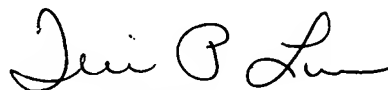
Art Unit: 3644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elizabeth A. Shaw  
Examiner  
Art Unit 3644

September 7, 2004



**TERI P. LUU**  
**SUPERVISORY PRIMARY EXAMINER**